

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

No. 09-33308 T
(Judge Thompson M. Dietz)

CLIFFORD KEETON BARNES, et al.,

Plaintiffs,

v.

UNITED STATES,

Defendant.

**REPLY IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS CLAIM OF BRIAN
LEIDING FOR LACK OF JURISDICTION OR, IN THE ALTERNATIVE, FOR
FAILURE TO STATE A CLAIM**

On October 21, 2022, defendant moved to dismiss the claim of Brian Leiding for failure to establish the jurisdictional prerequisites for bringing a refund claim or, in the alternative, for failure to state a claim. (*See* Dkt. 35.) The deadline for Mr. Leiding to respond to defendant’s motion was December 2, 2022. (Dkt. 28.) He did not respond by the deadline. (*Cf.* Dkt. 40.) Accordingly, defendant respectfully requests the Court treat as unopposed defendant’s motion to dismiss the claims of Mr. Leiding. (Dkt. 35.)

Given the *pro se* status of Mr. Leiding, as well as the other plaintiffs in the *Koopmann* cases, it is possible that he intended to rely on the reply briefs filed by other plaintiffs.¹ (*See, e.g.,*

¹ Defendant notes that one *pro se* plaintiff “may not represent . . . any other person in any proceeding before this court.” RCFC 83.1(3). And the Court drew this requirement to plaintiffs’ attention in its scheduling Order. (*See* Dkt. 16 (“Each individual plaintiff **SHALL EACH FILE** their responses to Defendant’s dispositive motions **by no later than December 2, 2022.** . . . [E]ach of the individual plaintiffs must file their own individual response.”) Thus, Mr. Leiding was required individually to respond to defendant’s motion, either by signing the joint response or by filing their own separate responses. (*See id.*)

Dkt. 40.) Defendant notes first that its motion to dismiss the claim of Mr. Leiding was focused on his failure to provide the information necessary to establish the jurisdictional prerequisites for refund claims in this Court, and so it differed from the motions to which the other plaintiffs were responding.

However, defendant also moved, in the alternative, to dismiss Mr. Leiding's claim for failure to state a claim—an argument overlapping with arguments defendant made in Group 7, which was the case designated for plaintiffs who filed timely administrative claims for refund. If the Court were to reach the merits issue in this case, and if the Court were to consider the arguments in the *Koopmann* briefs when it resolves defendant's motion to dismiss the claim of Mr. Leiding, defendant would ask the Court to consider defendant's previously filed reply in Group 7 on the merits, which defendant incorporates here by reference and attaches as Appendix A, in accordance with RCFC 5.4(b)(3).

Respectfully submitted,

January 17, 2023

s/ Emily Van Dam

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CERTIFICATE OF SERVICE
Service via First Class Mail

I certify that the undersigned is serving a copy of the foregoing document and attached appendix on the following individual(s) by first class mail at the following address(es):

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January 17, 2023



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